

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE: . Case No. 22-19361-MBK
. (Jointly Administered)
BLOCKFI INC., et al., .
. .
Debtors. .
. August 1, 2023
. 10:30 a.m.

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE MICHAEL B. KAPLAN
UNITED STATES BANKRUPTCY COURT JUDGE

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1 THE COURT: Okay. We'll start off in a moment,
2 everyone. Good morning. This is Judge Kaplan. We will start
3 the BlockFi Inc. matters.

4 As usual, with remote appearances should you wish to
5 be heard, please make use of the raise hand function, and I
6 will do my best to call upon you.

7 You beat me almost to punch, Ms. Okike. So why don't
8 we turn to -- I have the amended agenda. Let me hear from
9 debtors' counsel.

10 MS. OKIKE: Thank you, Your Honor. Good morning.
11 Christine Okike of Kirkland Ellis on behalf of the debtors.

12 Your Honor, we are pleased to be before you today to
13 announce that the debtors and the Committee reached a global
14 settlement, which has been incorporated into the plan and
15 disclosure statement that we filed at Docket Numbers 1300 and
16 1301 respectively, and that the debtors and the Committee are
17 working hand in hand to bring these Chapter 11 cases to
18 conclusion as quickly as possible and return value to BlockFi's
19 customers.

20 Thank you to Your Honor for helping the parties reach
21 this global settlement, which we believe maximizes value for
22 creditors, best positions the debtors to prevail in significant
23 litigation with FTX, Alameda, 3AC, and other parties, and
24 allows the debtors to make distributions in kind which we know
25 is of critical importance to our clients.

1 Some key terms of the global settlement include the
2 Committee's settlement parties, which include all persons who
3 served as officers and/or directors of the debtors during these
4 cases, will participate and assist the wind down trustee with
5 any ongoing litigation including prosecuting claims against and
6 by 3AC, FTX, Alameda, Core Scientific, and any other
7 counterparties, and also assisting the wind down trustee in
8 making in-kind distributions to creditors.

9 All preference claims held by the debtors against
10 their clients will be released except for preference claims
11 against any client that in total aggregate over \$250,000
12 arising out of withdrawals from BlockFi interest accounts or
13 BlockFi private accounts, other than the release of loan
14 collateral upon the repayment of loans on and after November
15 2nd, 2022 that are held by any debtor other than BlockFi
16 International.

17 The Committee settlement party shall contribute a
18 total of 2.25 million in cash to the estates and waive
19 approximately seven million in claims against the debtors,
20 which will increase recoveries for other creditors.

21 The Committee settlement parties will collectively
22 contribute over 1500 hours in assisting the wind down trustee
23 following the effective date of the plan, and in exchange for
24 these contributions, all claims and causes of action by the
25 debtors against the Committee settlement parties will be

1 released under the plan.

2 The plan contains an opt-out structure for third-
3 party releases. Creditors who do not opt out will be deemed to
4 have consensually released their direct claims against third
5 parties and will receive a release from the debtors all of
6 claim other than the retained preference claims.

7 We've included language clarifying that nothing in
8 the plan settles, releases or discharges direct claims held by
9 creditors who opt out of the third-party release, other than
10 claims against the debtors which are going to be compromised
11 under the plan.

12 In support of the debtor release, before filing any
13 claim against any of the Committee settlement parties, any
14 creditor must, first, have opted out of the third-party release
15 and, second, obtained a ruling from Your Honor that all such
16 claims fall outside the scope of the debtor release, including
17 that they are not derivative claims.

18 The release of the Committee settlement parties is
19 conditioned upon their cooperation and payment along the terms
20 that I've outlined, and in the event that the wind down trustee
21 does not believe that a Committee settlement party is honoring
22 its cooperation or payment obligation, they will provide notice
23 to that party. And if there continues to be a dispute over
24 cooperation or payment following a ten-day notice period, the
25 wind down trustee may ask the Court to void the debtor release

1 for lack of compliance with such settlement obligations.

2 And if the Court were to determine that any Committee
3 settlement party has violated an obligation under the
4 settlement and has not cured that violation, the debtor release
5 would be void as to that individual.

6 The global settlement also provides that the
7 insurance providers will not be released parties or releasing
8 parties under the plan, and the Committee settlement parties
9 will reserve all claims and causes of action against them.

10 Your Honor, we filed the original disclosure
11 statement back on May 12th at Docket Number 876 and the
12 supplemental motion on July 30th at Docket Number 1294. We
13 also filed a motion to shorten notice with respect to the
14 supplemental motion at Docket Number 1297, which Your Honor
15 granted at Docket Number 1298, and we appreciate Your Honor
16 hearing us on shortened notice.

17 Your Honor, we are seeking approval of the disclosure
18 statement on a conditional basis so that we can begin
19 soliciting votes on the plan and accelerate the plan
20 confirmation process all with the goal of returning value to
21 our stakeholders as quickly as possible.

22 We believe the disclosure statement contains adequate
23 information, including with respect to among other things the
24 debtors' corporate history, business operations, assets,
25 organizational structure, and capital structure, the events

1 leading to the commencement of these Chapter 11 cases, the key
2 events in the debtors' Chapter 11 cases, including the Special
3 Committee's investigation and conclusions and the terms of the
4 Committee settlement, the proposed debtor release, third-party
5 release, exculpation and injunction provisions of the plan, a
6 description of the material litigation claims against FTX,
7 Alameda, 3AC, and other parties, a liquidation analysis, which
8 shows that anticipated recoveries under the plan exceed
9 recoveries under a hypothetical Chapter 7 liquidation, a
10 description of certain risks associated with the plan, a
11 description of certain U.S. federal income tax consequences of
12 the plan, the procedures for soliciting votes to accept or
13 reject the plan, the statutory requirements for confirmation
14 and consummation of the plan, and a recommendation by the
15 debtors that holders of claims in the voting classes vote to
16 accept the plan.

17 Your Honor, while we believe the disclosure statement
18 contains adequate information to allow a hypothetical creditor
19 to determine how to vote, we're not seeking final approval of
20 the disclosure statement today. We're only seeking approval on
21 a conditional basis, an approval of the solicitation and voting
22 procedures, and solicitation materials, including the ballots,
23 notices, and letters, and related confirmation dates and
24 deadlines.

25 Approval of the disclosure statement on a conditional

1 basis will allow us to begin the solicitation process now so
2 that we can accelerate the timeline of these Chapter 11 cases.

3 Your Honor, we received three objections to the
4 disclosure statement filed from the FTX debtors, 3AC, and the
5 SEC. Importantly, Your Honor, not a single client, and the
6 debtors have over 600,000 clients, filed an objection to the
7 disclosure statement prior to or following the July 5th
8 objection deadline, and the disclosure statement now includes a
9 global settlement with the Committee.

10 We believe the objections from the FTX debtors, 3AC,
11 and the SEC are moot for purposes of the limited relief we're
12 seeking today, but I will briefly address each in turn.

13 The SEC filed a limited objection to the releases,
14 which we believe has been addressed by revisions to the
15 disclosure statement. There is significant disclosure about
16 the debtor release, including the Special Committee
17 investigation, conclusions, and recommendations, as well as the
18 global settlement reached with the Committee, including the
19 parties to be released and the contributions that they are
20 making in exchange for the release.

21 There is a disclosure regarding the third-party
22 release, including the opt-out mechanism, and the implications
23 and considerations to be taken into account in deciding whether
24 to exercise that election.

25 Your Honor, the FTX debtors and 3AC both filed

1 objections to the confirmation schedule, arguing that the
2 timeline does not provide them with due process. We have made
3 clear in the amended disclosure statement that the debtors
4 dispute the claims filed by the FTX -- by FTX, Alameda, and
5 3AC, and we intend to file objections to their claims in the
6 near term, as well as motions seeking to estimate their claims.

7 While the debtors believe that the FTX, Alameda, and
8 3AC claims should be disallowed, those parties will have a full
9 and fair opportunity, like all other creditors, to have their
10 claims adjudicated in accordance with due process requirements.

11 And to be clear, we're not asking the Court for
12 approval of the disclosure statement to set a timeline for
13 adjudicating their claims. We will do that outside of the plan
14 process, and if FTX, Alameda or 3AC have an issue, they can
15 object at the appropriate time.

16 Your Honor, we've also provided for flexibility in
17 the treatment of the FTX, Alameda, and 3AC claims under the
18 plan. While we believe their claim should be disallowed, and
19 if not disallowed, recharacterized and/or subordinated, the
20 treatment section provides that to the extent this Court
21 determines otherwise, they will receive the same treatment as
22 other creditors of the same priority at the relevant debtor
23 entity.

24 So, FTX, 3AC, and Alameda we submit are not
25 prejudiced by the plan, and, in fact, this is the same

1 structure we incorporated into Voyager's confirmed plan to deal
2 with the dispute with the FTX debtor's asserted preference
3 claims in that case, and which allowed the plan to be confirmed
4 and distributions to be made to creditors.

5 Your Honor, it's critically important that BlockFi's
6 Chapter 11 cases are not held hostage to FTX, Alameda, and
7 3AC's own cases which are moving at a much slower pace. We
8 want short term value to creditors on as quick a timeline as
9 possible.

10 Your Honor, the FTX debtors and 3AC also argue that
11 the disclosure statement does not provide a basis for
12 recharacterizing and/or subordinating their claims. Your Honor,
13 we have disclosed the claims asserted by FTX, Alameda, and 3AC,
14 the counterclaims the debtors believe they have against them,
15 and the reasons why the debtors believe their claim should be
16 disallowed, recharacterized and/or subordinated.

17 We've also included high and low end projected
18 recoveries for creditors which take into account the potential
19 litigation outcomes with FTX, Alameda, and 3AC, and noted that
20 this litigation will have a material impact on creditor
21 recoveries.

22 Your Honor, we mention FTX 263 times in the
23 disclosure statement, Alameda 122 times and 3AC 93 times, so
24 the idea that we have not provided adequate disclosure for
25 creditors to determine how to vote should be rejected outright.

1 The FTX debtors and 3AC feign objections to the
2 disclosure statement in an effort to have the debtors reveal
3 their litigation strategy to the litigation counterparties
4 themselves, and, Your Honor, we submit this is inappropriate.

5 We have spoken to counsel to 3AC and agreed to make a
6 change to their treatment under the plan, which clarifies that
7 if the 3AC claims are allowed the debtors will seek to
8 equitably subordinate them as opposed to the prior language
9 which said they shall be equitably subordinated. I will let,
10 you know, counsel for 3AC speak as to whether that resolves
11 their disclosure statement objection.

12 Your Honor, again, while we believe we've provided
13 adequate disclosure to creditors to determine how to vote,
14 we're only seeking conditional approval at this time, and any
15 objections to approval of the disclosure statement on a final
16 basis can be made at the combined hearing. So we would
17 respectfully request that Your Honor approve the disclosure
18 statement on a conditional basis, as well as the solicitation
19 procedures and materials, and related dates and deadlines.

20 Your Honor, I'm happy to answer any questions,
21 otherwise I will cede the podium to any of the objectors.

22 THE COURT: All right. Thank you, Ms. Okike. Let me
23 first turn to Committee counsel to see -- to have counsel
24 advise the Court of their position.

25 MR. AULET: Thank you, Your Honor. Kenneth Aulet of

1 Brown Rudnick for the Committee.

2 Your Honor, the Committee supports this plan. I
3 think it's important to step back a minute and remember that
4 this is -- this is a very hard case. This is not a case where
5 we ultimately had a business that could be saved and
6 reorganized. This is a case where what we're doing here is
7 we're trying to return the life savings of over 650,000
8 individuals. It's not about allocating value between
9 sophisticated commercial entities. It's not about trying to
10 rebuild something. It's just about trying to get as much money
11 back to the people who lost money as possible.

12 And, you know, we have all had to do that without the
13 benefit of sort of the specialized laws that have been created
14 to deal with companies that have such large numbers, the
15 individual depositors or, you know, operate similar businesses.

16 And on that note, I also have to talk about the job
17 that the Committee has been asked to do. The Committee are
18 unpaid volunteers in this case. Each of them are significant
19 creditors of BlockFi, who have devoted hours each week and
20 sometimes days each week for free to working on this case and
21 trying to do the best that they can do for each of the
22 creditors that they represent.

23 You know, they've been asked to make very, very hard
24 choices, choices that, you know, the professionals in this case
25 who do this day in and day out struggle with, but to do those

1 without having had years of expertise in this and having to
2 make decisions that not only affect their pocketbook, but
3 realize that they're affecting the pocketbook of every single
4 one of these 650,000 people, and that's a tremendous
5 responsibility to put on to individual creditors who are
6 volunteers in this case.

7 And, you know, they have executed the job that
8 they've been asked to do better than anybody could have
9 expected them to do. They've spent more time on this case than
10 any other committee that I've ever seen day in and day out.
11 They've asked more questions and been more involved and
12 demanded to know why everything is happening, why every dollar
13 that's being spent is being spent because ultimately every
14 dollar that's been spent on these cases comes out of their and
15 other creditors' pockets.

16 And, ultimately, again, this is not a case where
17 we're going to have a win. This is a case where everybody is
18 trying to get to the least bad result. Even if we ultimately
19 get 100 percent distributions to creditors, many of those
20 creditors were invested in Bitcoin, Ethereum, and maybe missing
21 out on the value ramp up that happened between the petition
22 date and today. And all of these choices were put on nine
23 individuals who were asked to volunteer their time and did so.

24 And that brings us to where we are today. It's time
25 to end this case, and we are pleased that we have a plan and

1 disclosure statement that the Committee can support. The
2 settlement reached paves the way for these cases to end, you
3 know, not only on the timeline the debtors proposed, but to
4 accelerate emergence, and to deliver several valuable benefits
5 to these creditors that we represent.

6 You know, the first is that this settlement finally
7 puts creditors back in control of their own destiny following
8 emergence date. The Committee on behalf of creditors will
9 select a trustee. That trustee will answer to an oversight
10 board composed of creditors, and the Bermuda JPLs, and
11 creditors will ultimately get to make every decision going
12 forward after that date on what money to spend, what should be
13 done with the cause of action and finally have control of their
14 own destiny.

15 We discussed a number of times the cost of these
16 cases. We're pleased that we and the debtors were able to
17 reach agreement on a budget which will in addition to ending
18 the litigation between us and the debtors cut costs going
19 forward to allow for greater distributions to customers by
20 reducing the costs of these cases going forward through the
21 emergence date.

22 We preserved valuable claims, including the claims
23 against the D&O insurance carriers that we believe provide a
24 avenue for additional recovery of creditors, and we've provided
25 certainty to the vast majority of creditors that, you know,

1 preference claims before November 2nd are going to be waived
2 entirely. It doesn't depend on how you vote. It doesn't
3 depend on if you give a release or not. Those claims are gone
4 and nobody needs to worry about them. Even for claims arising
5 after November 2nd, only the largest of those claims will be
6 preserved on claims over 250,000.

7 We believe that this provides a great deal of
8 certainty for creditors that the preference claims that the
9 Bankruptcy Code creates and imposes an obligation on the
10 estates to preserve are maximized for the benefit of creditors,
11 but also do not impose costs on the individual retail creditors
12 in this case.

13 There's other structural changes. The convenience
14 class will allow a large number of creditors to receive greater
15 initial distributions, so that the estates don't have to bear
16 the cost of providing future distributions, giving those
17 creditors certainty and giving other creditors additional
18 recoveries by cutting the costs of the post-emergence debtors.

19 We've expanded the authority of the wind down
20 trustee, too. If they determine it's appropriate, make in kind
21 of distributions beyond six months. That's going to be a
22 decision that will have to be made by the wind down trustee
23 under the circumstances, but we thought that it was important
24 to if there's a cost effective way to do that to maintain that
25 authority.

1 And, finally, again, we can end these cases, and we
2 can begin the process of moving on, distributing all the value
3 that's on BlockFi's books back to customers and begin dealing
4 with the FTX claims, both the five billion of claims that
5 they've asserted against BlockFi, which, you know, the
6 Committee is entirely unamused by, and to recover the amounts
7 that FTX and Alameda owe the creditors of BlockFi.

8 And with that, Your Honor, we'd ask that the Court
9 approve the disclosure statement on a conditional basis.

10 THE COURT: Thank you, Mr. Aulet. Let me turn to the
11 Office of the U.S. Trustee. Ms. Bielskie or Mr. Sponder, do
12 you wish to be heard?

13 MR. SPONDER: Thank you, Your Honor. Good morning.
14 This is Jeff Sponder from the Office of the United States
15 Trustee.

16 Your Honor, prior to the debtor filing the amended
17 plan and disclosure statement yesterday and seeking the
18 conditional approval of such disclosure statement, it was my
19 understanding that the U.S. Trustee and the Committee had until
20 August 7th of this year to object to the prior disclosure
21 statement and the solicitation procedures.

22 Instead of having until August 7th, 2023, with a
23 hearing to be held on August 16th, 2023, the debtors are now
24 seeking the conditional approval of the disclosure statement
25 and the approval of the solicitation and notice procedures

1 today. As such, the U.S. Trustee's deadline to object to the
2 solicitation and notice procedures has been decreased from
3 August 7th, 2023 to today.

4 Your Honor, despite such reduction, the U.S. Trustee
5 has quickly reviewed the solicitation and notice procedures
6 even though more time is needed and provides the following
7 comments.

8 Section (b), Your Honor, the ballots can only be
9 submitted through the debtors' online balloting portal. The
10 debtor should also be required to accept hard copies of ballots
11 and provide an address to send such ballots.

12 Section (c) (3) (C) and (D), a resolution event means
13 the occurrence of such event no later than two business days
14 prior to the voting deadline. If a resolution event occurs and
15 no later two business days after, the debtors must serve the
16 solicitation package. So there is a chance that creditors will
17 receive a solicitation package on the voting deadline.

18 Section (c) (5) requires objections to executory
19 contracts to be served on parties in interest, which is not
20 defined, via CD-ROM and PDF format. It's our belief a hard
21 copy should suffice. There's no requirement that a CD-ROM
22 should be provided.

23 Section (d) (3) (L), (M) and (N), the debtors may waive
24 any ballot defect or irregularity, the debtors are under no
25 duty to notify creditors of a defective vote or irregular

1 ballot, and the debtors may count and opt out for releases even
2 if a ballot is deemed defective or irregular. As such, it
3 appears that the debtors may pick and choose which ballots to
4 keep even if defective or irregular, do not have to advise
5 creditors of such invalidity, and can effectuate and opt out on
6 a creditor that is deemed not allowed to vote on the plan.

7 Section (d) (3) (U), the debtors can enter into
8 stipulations with creditors agreeing to amounts for voting
9 purposes. However, will any such agreements be noticed to
10 other parties in interest, and will they have a right to
11 object?

12 Section (e), Your Honor, sets forth that the debtors
13 reserve their rights to make changes to all these pleadings
14 including the disclosure statement plan and solicitation
15 package without further court order. The U.S. Trustee just
16 wants to confirm that these changes without court order will
17 only be typographical or grammatical changes.

18 Moving on, Your Honor, to the attachments. The
19 notice of non-voting status as to unimpaired creditors, again,
20 requires objections to be filed and served on parties in
21 interest, that's not defined, by sending it via CD-ROM and PDF
22 format. We think that parties in interest should be defined,
23 and that a hard copy would suffice and not in a CD-ROM format.

24 It requires creditors to e-mail Kroll to receive a
25 copy of the pleadings, or by requiring creditors to go to the

1 Kroll website or to the bankruptcy court website. As they are
2 creditors, they should receive a copy of the pleadings just
3 like all other -- all the creditors that are allowed to vote.

4 Then they'll receive an opt-out form and must submit
5 it only via the online portal. Again, as stated earlier in the
6 solicitation procedures, creditors should be allowed to submit
7 an opt-out form via hard copy as well as the online portal.

8 Similarly, Your Honor, the notice of non-voting
9 status as to impaired creditors and as well as to disputed
10 claim holders have similar issues to them.

11 Moving on to the disclosure statement -- well, the
12 confirmation hearing and the voting deadline and the objection
13 deadline, it appears the debtors seek to establish September
14 8th, 2023 as the voting deadline and the objection deadline, as
15 well as having the combined confirmation adequacy hearing to be
16 held 19 days later on September 27th of 2023.

17 Pursuant to the solicitation and notice procedures,
18 the debtors will have 10 days after the order is entered to
19 serve the solicitation notice packages. As such, if the order
20 were entered today, and the debtors waited the 10 days, the
21 service of the solicitation package, disclosure statement and
22 plan would be 28 days prior to the objection voting deadline.
23 If the order is entered tomorrow, then it would be less than 28
24 days.

25 As the debtor has a 19-day buffer between the

1 objection/voting deadline and a confirmation adequacy hearing,
2 the U.S. Trustee proposes that the objection voting deadline be
3 moved to September 13th, 2023 and that confirmation remain on
4 for September 27th, 2023. The debtors' reply brief to any
5 objections can be due on September 20th, 2023.

6 Also, Your Honor, as it appears that the Committee
7 and debtors have reached a resolution, which is incorporated in
8 the plan, a question exists as to whether or not the debtor
9 intends to pursue the insider 9019 motion that is pending which
10 has objections due tomorrow. So we want to find out whether or
11 not that will proceed or if that is basically being withdrawn,
12 and that the settlement which includes what -- some of that
13 information is already included in now the amended plan. Thank
14 you, Your Honor.

15 THE COURT: Thank you, Mr. Sponder. Let me hear from
16 others and then of course we'll go back. At this point does
17 anyone else wish to be heard? Mr. Glueckstein?

18 MR. GLUECKSTEIN: Yes, good morning, Your Honor.
19 Brian Glueckstein, Sullivan & Cromwell on behalf of the FTX
20 debtors.

21 Your Honor, as represented by Ms. Okike, we did file
22 an objection to the disclosure statement that was on file on
23 behalf of the FTX debtors. The FTX debtors including Alameda
24 have significant claims into these estates that have been filed
25 that are being pursued on behalf of our creditors and the

1 victims of the FTX events.

2 We are pleased by the changes that were made to the
3 disclosure statement that was filed only yesterday, that, as
4 confirmed by counsel this morning, that any litigation that's
5 forthcoming with respect to our claims has been removed as we
6 understand it from the plan process and will be addressed
7 separately in an objection to the claims for which we will have
8 an opportunity to work with the debtors to schedule on an
9 appropriate litigation timeline.

10 There are references made with respect to potential
11 estimation of claims for distribution purposes. We have
12 concerns about that. We obviously haven't seen a motion yet,
13 and of course we'll respond to that and engage with the debtors
14 if and when such a motion is filed.

15 But for purposes of today and the limited relief
16 being requested today, Your Honor, with respect to the
17 conditional approval of the disclosure statement, the changes
18 that have been made with respect to the process as it pertains
19 to the FTX debtors claims resolve our objection for purposes of
20 today only and reserve all rights with respect to those claims
21 in a future proceeding.

22 THE COURT: All right. Thank you, Mr. Glueckstein,
23 appreciate it. Mr. Goldberg?

24 MR. GOLDBERG: Thank you, Your Honor. Adam Goldberg
25 of Latham & Watkins on behalf of the Foreign Representatives of

1 the Three Arrows Capital estate.

2 Very briefly, Your Honor, that is -- Three Arrows
3 Capital is in a liquidation proceeding in the British Virgin
4 Islands, and we've been recognized as a foreign main proceeding
5 in the Southern District of New York before Judge Glenn.

6 As Ms. Okike represented, we did object to the
7 disclosure statement, and like FTX, we take the debtors'
8 assurances both in discussions as well as on the record here
9 that the plan will not seek to adjudicate our claims or
10 subordinate them, and we were appreciative of the debtors'
11 efforts in working with us on clarifying the treatment section
12 to make clear that the plan does not equitably subordinate
13 Three Arrows' claims, and instead those issues will be reserved
14 for another day.

15 So, just to be brief, Your Honor, like FTX, our
16 issues are resolved today. We're not here to hold up anything.
17 We're here to assert the valid claims that Three Arrows has
18 against these debtors for the benefit of the Three Arrows
19 substantial creditors as well, and we look forward to working
20 with the debtors towards a resolution of those, if that is
21 possible, or being before Your Honor where necessary. Thank
22 you.

23 THE COURT: Thank you, Mr. Goldberg. Does anyone
24 else wish to be heard?

25 MR. MAZA: Yes, Your Honor. Alan Maza from the SEC.

1 THE COURT: Yes, please.

2 MR. MAZA: Okay. Thank you, Your Honor. In terms of
3 our limited objection, so basically we have the -- a very
4 pragmatic objection to just broad releases, which fail to
5 really identify claims or, you know, parties, the consideration
6 of particular parties, particularly when you have a broad
7 related persons definition of former officers, directors.

8 And while we definitely understand in this unique
9 case that there are a lot of parties that are giving
10 consideration, which may be valid and justify the broad
11 releases, it's not clear that every individual or entity that
12 has been set forth in the released parties definition justifies
13 this kind of broad release.

14 So, essentially, we would like to see the debtors
15 really go through the paces and be specific or limit the
16 particular release to those that could be justifiably entitled
17 to this extraordinary relief. That's a general objection that
18 we set forth in our limited objection.

19 In terms of one other issue we found a little
20 concerning, and we brought this to debtors' counsel's
21 attention, which could be resolved at any point, is that on
22 Page 58 of the disclosure statement or 68 of the plan we
23 identified language with particularly with respect to the
24 release, which requires people, creditors who have already
25 opted out of the release provision to go through an additional

1 hurdle of coming before the bankruptcy court to bless the
2 release one more -- bless the exception to the release an
3 additional time. We don't typically see that in many cases.

4 Plus, we feel that in a sense that could actually
5 deter those who already went the extra step to opt out of the
6 release to be able to preserve their direct claims to all of a
7 sudden now go through this other additional step, which is not
8 a simple step for, you know, many people. It's actually now
9 hire a lawyer or (indiscernible) pro se come before Your Honor.

10

11 And if there is that burden, I think it should be
12 actually be put on those parties that are getting the benefit
13 of this release, that if they are sued in the state court,
14 perhaps they could, you know, cross move or -- you know, not to
15 advise how they should proceed, but make them come up with this
16 additional hurdle to say, excuse me, that this release was not
17 actually contemplated under the plan, but to push this burden
18 onto the released creditor or the creditor that's opted out is
19 -- we find that unfair.

20 So that's where we stand on those two issues.

21 THE COURT: All right. Thank you, Mr. Maza. I guess
22 at first blush, it sounds like the burden is more on me. I'm
23 going to have to hear these. So --

24 MR. MAZA: You know what, I should have taken that
25 into consideration, but the -- yeah, certainly.

THE COURT: But I believe that issue and the others raised can obviously be addressed as part of the whole confirmation combined hearing.

4 Let me hear -- is there anyone else who wishes to
5 weigh in?

6 (No audible response)

7 THE COURT: All right. Let me first express the
8 Court's appreciation and gratitude and actual recognition to
9 the efforts of the Committee, the Committee members, and its
10 professionals, as well as the debtors' management and their
11 professionals in reaching the accord and which will allow the
12 case to move forward or at least the plan process to move
13 forward and thereby avoid substantial additional administrative
14 burdens.

15 It's important to this Court, and I think it's shared
16 by the professionals, that the end game be recognized as trying
17 to return value to the customer base and those that have placed
18 at times their life savings and other significant sums at risk
19 in the most expeditious and least costly fashion.

20 It has been pointed out that the burn rates of these
21 crypto currency cases is extensive. Unfortunately, it's
22 somewhat unavoidable given the plethora of issues, complex
23 issues that are there. They are facing the receivers in
24 foreign liquidation proceedings. They're facing the trustee's
25 and those appointed to look after the interests, such as in

1 FTX, 3AC.

2 So, everyone is facing hurdles in these types of
3 cases resulting from a lack of clarity with respect to the law
4 as it applies to the tokens and the vast interrelationship of
5 the claims among these entities.

6 These are difficult cases. The Committee in this
7 case has faced difficult pragmatic decision-making choices
8 about how to move forward and best protect the interest of
9 creditors, somewhat distasteful at times in trying to reach an
10 accord, but in the end I think we're moving in the most
11 efficient and least costly path.

12 And both the debtors' professionals and the
13 Committee's professionals have recognized the budgetary
14 restraints, the significant run rates that we've -- and burn
15 rates that we've been seeing, and I think the path chosen in
16 proceeding towards a conditional approval makes the upmost
17 sense.

18 I want to also express my appreciation to the Office
19 of the U.S. Trustee in trying to review this hundred-page
20 document with amendments and changes in what amounts to hours.
21 I think they've undertaken a yeoman's work, and I recognize the
22 difficulties.

23 And let me also express the Court's appreciation to
24 both counsel for FTX and 3AC in recognizing the bigger picture
25 and that they can protect their interests of their respective

1 clients and not impede the process here as in other cases as
2 well.

3 My suggestion for the debtors' counsel and the U.S.
4 Trustee with respect to those issues that have been raised
5 would be to see if they can meet and confer either the rest of
6 today or tomorrow.

7 I can schedule just a follow up call, and it's my
8 intent to approve a conditional -- the disclosure statement on
9 a conditional basis and set down this matter for confirmation
10 hearing along the timeline with one adjustment that I'll talk
11 about.

12 I think it would make sense rather than try to pick
13 off these issues that have been raised by Mr. Sponder right now
14 to allow counsel and the U.S. Trustee to try to see if they can
15 pare down any issues, see what they can agree on.

16 I am available tomorrow afternoon for a follow up
17 call, just among the parties in interest on these issues,
18 meaning maybe the debtor and Committee and the U.S. Trustee,
19 and if there can't be an agreement on any particular issue,
20 I'll make the call then, so we can get the process started
21 without delay.

22 I could do it tomorrow afternoon or I could do it on
23 Thursday. I'll ask Ms. Okike to weigh in on how best to
24 schedule it. I'm anticipating just a short follow up call,
25 unless the parties can actually agree on all the issues that

1 have been raised. Also --

2 MS. OKIKE: Yes, Your Honor.

3 THE COURT: Yes.

4 MS. OKIKE: Oh, apologies.

5 THE COURT: Ms. Okike, if you could also discuss
6 what's intended going forward with the 9019 and the like.

7 MS. OKIKE: Yes, Your Honor. We are happy to meet
8 and confer with the trustee.

9 I would just raise I think one point which I think
10 the debtors and the Committee are not going to amendable to
11 that was raised was the idea of doing hard copy ballots. That
12 is going to be astronomical cost for these estates, and we've
13 worked very diligently with Kroll to set up this online
14 balloting portal for submission of ballots and opt-out forms.

15 And if we were to undergo the hard copy ballot
16 solicitation process, we're talking about increasing the cost
17 here probably by, you know, millions and millions of dollars,
18 which no one on the debtors' side or the Committee's side
19 thinks is a good use of estate resources. So that's just one
20 point that I know we will not reach agreement with the trustee
21 on.

22 We're happy to work through the other issues.

23 Unfortunately, we didn't receive the list of issues prior to
24 this call, so it's hard for me to follow all of the things that
25 he was referring to, but we're happy to work with the Committee

1 and the U.S. Trustee following this hearing to try to narrow
2 the issues.

3 THE COURT: Would it make sense, and I'll -- I see
4 Mr. Sponder's hand. I'll let him weigh in. Would it make
5 sense to have a follow up Zoom call tomorrow afternoon?

6 MS. OKIKE: Yes, Your Honor. That works for the
7 debtors.

8 THE COURT: Mr. Sponder, your thoughts on a 2:00 call
9 tomorrow?

10 MR. SPONDER: Thank you, Your Honor. That is fine.
11 I will note, and I know I was just reading through our issues,
12 what we are asking for is that they can -- that the debtors can
13 provide the ballots, and as long as they can be printed, that
14 creditors can send it back via hard copy, not for the debtors
15 to send it out via hard copy. We didn't go into that. So
16 that's that issue.

17 Also, one of debtors' attorneys had asked me to send
18 over the information that I just set forth on the record, which
19 I already did, so that they have that information, and
20 hopefully we can resolve most of the issues without having to
21 have that call, even though I would love to have that call with
22 you, Your Honor.

23 THE COURT: Well, who wouldn't? So I'll leave the
24 call at -- we'll schedule it at 2:00 on a as needed basis.
25 You'll contact chambers.

1 Otherwise, as I've indicated, I -- it makes sense to
2 pursue this route. I'm prepared to set up approval on a
3 conditional basis. The only tweak in the dates, the
4 confirmation hearing date as requested is September 27th. It's
5 unfortunately a Chapter 13 day for me I believe. I could
6 either do the 26th, which is a Tuesday, or the 29th, which is a
7 Friday. Is there a preference?

8 MS. OKIKE: Either of those is fine the debtors, Your
9 Honor.

10 THE COURT: Well, then we always stay away from a
11 Friday, so why don't we go with the -- we'll go with the 26th,
12 and that gives us also room if we have to kick it a day or a
13 couple of days. And --

14 MS. OKIKE: Thank you, Your Honor, and just to circle
15 back on --

16 THE COURT: Yes.

17 MS. OKIKE: -- your question with regard to the 9019.
18 So we will not be moving forward with the 9019 motion given
19 that the settlement with the Committee has been incorporated
20 into the plan. So we would -- we'd probably just adjourn that
21 motion until we get to the confirmation hearing.

22 THE COURT: We'll carry it to the 26th then. We'll
23 put down confirmation for 10:00 a.m. We'll carry the 9019
24 that's scheduled now for the 16th. I'm sure my chambers will
25 be reaching out for debtors' counsel just to review the matters

1 that are on for the 16th, which actually can be kicked to the
2 confirmation date. We have the exclusivity motion --

3 MS. OKIKE: Yes, Your Honor. So I believe --

4 THE COURT: -- also --

5 MS. OKIKE: I believe we are cancelling the August
6 16th hearing and keeping the 17th, which we also had.

7 THE COURT: All right.

8 MS. OKIKE: And so, as Your Honor knows, we have a
9 bridge order on exclusivity that expires on August 16th, and so
10 we're seeking approval of the proposed order that we filed
11 along with the debtors' second motion for an extension, which
12 was at Docket Number 886. That would extend our filing
13 deadline to August 23rd and our solicitation deadline to
14 September 30th.

15 We've obviously made substantial progress towards
16 bringing these cases to conclusion, including reaching a global
17 settlement with the Committee, and we're just seeking an
18 extension to give the debtors the opportunity to prosecute the
19 plan on file. So we'd respectfully request that you would
20 enter that order.

21 THE COURT: All right. Mr. Sponder, your hand is
22 raised again.

23 MR. SPONDER: Thank you, Your Honor. The United
24 States Trustee doesn't have any issues with respect to the
25 exclusivity.

1 I wanted to go back to the 9019, and our
2 understanding was that this was going to be withdrawn, not
3 adjourned, so it still requires objections to be filed. We do
4 have an objection to that settlement. If the settlement is not
5 going to be pursued, we don't think we should have to file an
6 objection to it, if it's been incorporated in the plan, which
7 was one of our objections to the prior -- to that settlement.

8 So right now as it stands we'd have to file an
9 objection even though that might not -- it doesn't look like
10 that that settlement would be going through.

11 THE COURT: Ms. Okike?

12 MS. OKIKE: Yes, Your Honor, we would just put the
13 motion on a suspense docket, and we'd -- you know, if -- to the
14 extent we were to go forward with it, if the global settlement
15 were to fall apart for some reason, we would then, you know,
16 renote the objection deadline and give people an opportunity.

17 THE COURT: Okay. Why don't I do this, I think it
18 would make the most sense, I'm going to mark it, that 9019
19 motion withdrawn without prejudice. It could be reinstated by
20 correspondence. So that if there is -- if there is a need,
21 debtors' counsel will just contact chambers, and we'll
22 recalendar it and that will trigger the new dates.

23 MS. OKIKE: Great. Thank you, Your Honor.

24 THE COURT: All right.

25 MR. SPONDER: Thank you, Your Honor.

1 THE COURT: Anyone else wish to be heard?

2 (No audible response)

3 THE COURT: So, the second matter on for today was
4 Docket Number 886, the debtors' motion extending exclusivity.
5 We're going to mark it granted if -- do we have a form of order
6 already that was -- or does it have to be changed?

7 MS. OKIKE: Yes, Your Honor, we can resubmit it
8 though.

9 THE COURT: Resubmit it just to make sure we have the
10 right version, and otherwise, once again, I appreciate
11 everybody's time and efforts. I think we're on a positive --
12 we're pursuing a positive direction here. Thank you.

13 MS. OKIKE: Thank you, Your Honor.

14 THE COURT: You're welcome.

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C E R T I F I C A T I O N

I, COLETTE MEHESKI, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter and to the best of my ability.

/s/ Colette Meheski

COLETTE MEHESKI

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DATE: August 3, 2023